



STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

Amended License for Diversion and Use of Water

APPLICATION 23801
Page 1 of 6

PERMIT 16366

LICENSE 10827

THIS IS TO CERTIFY, That

Lucky Star Investment Group, LLC
37K Frenchmans Creek Road
Half Moon Bay, CA 94019

has the right to the use of the waters of **Frenchmans Creek** in **San Mateo County**
tributary to **Pacific Ocean**
for the purpose of **Irrigation use**.

The Deputy Director for Water Rights finds that: (a) the change will not operate to the injury of any lawful user of water; (b) good cause has been shown for the change; (c) the petition does not constitute the initiation of a new right; and (d) the State Water Resources Control Board (State Water Board) has made the required findings pursuant to the California Environmental Quality Act (CEQA) or the project is exempt from CEQA.

Additionally, the State Water Board has complied with its independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346], 658 P.2d 709.)

This amended license is being issued in accordance with the redelegations of authority (Resolution No. 2012-0029). Therefore, this amended license on **Application 23801** filed on **June 7, 1971** has been approved by the State Water Board SUBJECT TO PRIOR RIGHTS and to the limitations and conditions herein.

Amended License 10827 supersedes the license originally issued on **July 7, 1978**, which was perfected in accordance with the laws of California, the Regulations of the State Water Board, or its predecessor, and the terms of **Permit 16366**. The priority of this right dates from **June 7, 1971**. Proof of maximum beneficial use of water under this license was made as of **June 10, 1976** (the date of inspection).

The amount of water to which this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated purposes and shall not exceed **1.5 acre-feet per annum to be collected from January 1 to March 1 of each year**. The maximum diverted under this license shall not exceed **1.5 acre-feet** per year.

The maximum withdrawal in any one year is 1.5 acre-feet.

The maximum instantaneous rate of diversion to offstream storage shall not exceed 0.4 cubic foot per second.

The maximum amount of water collected to storage under this water right and License 6556 (Application 16512) shall not exceed 10.66 acre-feet per year.

This water right does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

THE POINT OF DIVERSION TO OFFSTREAM STORAGE OF SUCH WATER IS LOCATED:

By California Coordinate System of 1983, Zone 3, North 2,008,739 feet and East 5,999,964 feet, being within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 17, T5S, R5W, MDB&M.

THE PLACE OF STORAGE OF SUCH WATER IS LOCATED:

At reservoir within NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 17, T5S, R5W, MDB&M.

A DESCRIPTION OF THE LANDS OR THE PLACE WHERE SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

For Irrigation use of 5.6 net acres within a gross area of 66.6 acres as follows:

14.5 acres within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 17, T5S, R5W, MDB&M
0.5 acre within SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 17, T5S, R5W, MDB&M
15.5 acres within NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 17, T5S, R5W, MDB&M
22.3 acres within NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 17, T5S, R5W, MDB&M
6.8 acres within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 17, T5S, R5W, MDB&M
6.1 acres within SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 17, T5S, R5W, MDB&M
0.9 acre within SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 17, T5S, R5W, MDB&M

66.6 acres total as show on map on filed with the State Water Board.

No water shall be diverted to offstream storage under this license unless Licensee is monitoring and reporting said diversion of water. This monitoring shall be conducted using a device and methods satisfactory to the Deputy Director for Water Rights. The device shall be capable of monitoring the rate and quantity of water diverted and shall be properly maintained.

Licensee shall provide the Division of Water Rights with evidence that the device has been installed with the first annual report submitted after device installation. Licensee shall provide the Division of Water Rights with evidence that substantiates that the device is functioning properly every five years after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights.

Licensee shall maintain a record of all diversions under this license that includes the date, time, rate of diversion, and the amount of water diverted. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights.

(0060046)

No water shall be diverted under this license unless the flow in Frenchmans Creek is at or above 2.8 cubic feet per second, as measured at the Point of Diversion.

(0140060)

No water shall be diverted under this license unless the water right holder has installed a device, satisfactory to the Deputy Director for Water Rights, which is capable of measuring the flows required by the conditions of this license. The measuring device shall be properly maintained.

(0060062)

No water shall be diverted under this license unless Licensee is monitoring the bypass flow required by this license in accordance with a compliance plan, satisfactory to the Deputy Director for Water Rights. Licensee shall submit a report on bypass flow compliance activities in accordance with the schedule contained in the compliance plan.

(0000070)

No water shall be diverted under this license, and no construction related to such diversion shall commence, unless Licensee complies with the requirements of the Clean Water Act. In order to demonstrate such compliance, Licensee shall obtain a Clean Water Act section 404 permit from the U.S. Army Corps of Engineers, or evidence that such a permit is not required, and provide such permit or evidence to the Division of Water Rights. If it is determined that a Clean Water Act section 404 permit is required, Licensee shall further demonstrate compliance by obtaining a Clean Water Act section 401 certification from the State Water Board. (0000103)

Licensee shall obtain all necessary state and local agency permits required by other agencies prior to diversion, storage, or use of water under this license. Copies of these permits and approvals shall be forwarded to the Deputy Director for Water Rights. (0000203)

For the protection of habitat for the Red-legged frog (*Rana aurora draytoni*) and the endangered San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) and to allow for the growth of riparian vegetation, the Licensee shall:

- A. Establish and maintain an undisturbed 100-foot-wide strip of natural upland vegetation around the water storage reservoir. Establish and maintain, undisturbed, a 100-foot wide strip of natural upland vegetation around the water storage reservoir. Except for the exclusions stated herein, no ground disturbing activities shall occur within the 100-foot wide strip of upland vegetation, including, but not limited to, grading, herbicide spraying, roads, fencing, and use or construction of storage areas. There is excluded from the 100-foot wide strip of upland vegetation established herein all existing planted landscape areas, roads and roadways, bridges, equipment and material storage areas, buildings, structures, fences, wells, pipes, drainage facilities, utility lines and poles, pumps, sumps, water diversion and storage facilities, and access to all of the foregoing existing features for purposes of operation, maintenance and replacement, as such facilities and access exists now or may from time to time be modified. Equipment access through the 100-foot wide strip of upland vegetation shall incorporate best management practices to minimize disturbance to water, soils, and vegetation. Planting and irrigation of native riparian vegetation within the 100-foot wide strip of upland vegetation are allowed;
- B. Obtain approval of the U.S. Fish and Wildlife Service, Sacramento Endangered Species Office, and the State Department of Fish and Game prior to any reservoir dredging operations.
- C. Refrain from disturbing the fringe of emergent (wetland) vegetation in the reservoir during dredging operations.
- D. Restrict cattle and domestic stock access to the reservoir to a maximum of 10 percent of the shoreline or construct outlet pipes to watering troughs.

These requirements shall remain in effect as long as water is being diverted by the Licensee (or successors-in-interest) under this license. (0000205)

For undeveloped portions of the place of use along and adjacent to Frenchmans Creek, Licensee shall establish a setback for the protection of the riparian corridor along Frenchmans Creek. The setback shall be measured from the Watercourse Transition Line as defined in the 2012 California Forest Practice Rules (Cal. Code Regs., tit. 14, § 895.1.) and shall extend a minimum of 25 feet or to the outer edge of the drip line of the existing riparian trees, whichever is greater. Prior to ground disturbing activities adjacent to setback areas, Licensee shall stake the proposed setback and notify the Department of Fish and Game. Except for the exclusions stated herein, no ground disturbing activities shall occur within the setback area, including, but not limited to, grading, herbicide spraying, roads, fencing, and use or construction of storage areas. There is excluded from the setback areas established herein all existing orchards and planted landscape areas, roads and roadways, bridges, equipment and material storage areas, buildings, structures, fences, wells, pipes, drainage facilities, utility lines and poles, pumps, sumps,

water diversion and storage facilities, and access to all of the foregoing existing features for purposes of operation, maintenance and replacement, as such facilities and access exists now or may from time to time be modified. Equipment access through the setback area shall incorporate best management practices to minimize disturbance to water, soils, and vegetation. Planting and irrigation of native riparian vegetation within the setback area are allowed. Licensee shall restrict cattle or other domestic stock access to the riparian area. These requirements shall remain in effect as long as water is being diverted under this license.

(0000206)

An erosion control/revegetation plan and implementation schedule, prepared by a licensed civil engineer, shall be submitted to and approved by the Deputy Director for Water Rights, prior to starting construction. Before storing water in the reservoir, the water right holder shall furnish evidence which substantiates that the erosion control/revegetation plan has been implemented. Evidence includes photographs showing the project area vegetation and slopes.

(0000207)

No debris, soil, silt, cement that has not set, oil, or other such foreign substance will be allowed to enter into or be placed where it may be washed by rainfall runoff into the waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.

(0000208)

This right is conditioned upon full compliance with the State Department of Fish and Game's criteria for fish screens. When replacement of the fish screen required by this term becomes necessary, the new screen shall comply with the current screening criteria established by the DFG. If the fish screen required by this term is rendered inoperative for any reason, the right holder shall notify the Deputy Director for Water Rights immediately and shall restore the fish screen to service as soon as possible.

(0000213)

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

Reports shall be filed promptly by the water right holder on the appropriate forms which will be provided for the purpose from time to time by the State Water Board.

Water right holder shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by the State Water Board, reasonable access to project works to determine compliance with the terms of this license.

Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of water right holder without unreasonable draft on the source. Water right holder may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the water right holder in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution article X, section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

The quantity of water diverted under this license is subject to modification by the State Water Board if, after notice to the water right holder and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

This license does not authorize any act which results in the taking of a threatened or endangered species or candidate species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2089) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the water right holder shall obtain authorization for an incidental take prior to construction or operation of the project. Water right holder shall be responsible for meeting all requirements of the state or federal Endangered Species Acts for the project authorized under this license.

If construction or rehabilitation work is required for the diversion works covered by this license within the bed, channel, or bank of the affected water body, the water right holder shall enter into a streambed or lake alteration agreement with the State Department of Fish and Game. Water right holder shall submit a copy of the agreement, or waiver thereof, to the Division of Water Rights prior to commencement of work. Compliance with the terms and conditions of the agreement is the responsibility of the water right holder.

This license is granted and the water right holder accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the State Water Board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article (of the Water Code) and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every water right holder, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefore shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any water right holder or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any water right holder, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY
PHILLIP CRADER FOR:

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: NOV 28 2012



STATE OF CALIFORNIA
THE RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

License for Diversion and Use of Water

APPLICATION 23801

PERMIT 16366

LICENSE 10827

THIS IS TO CERTIFY, That

ERICA NURSERY, INC.
ROUTE 1, BOX 37K, HALF MOON BAY, CALIFORNIA 94019

HAS *made proof as of* JUNE 10, 1976 *(the date of inspection)*
to the satisfaction of the State Water Resources Control Board of a right to the use of the water of
FRENCHMANS CREEK IN SAN MATEO COUNTY

tributary to PACIFIC OCEAN

for the purpose of IRRIGATION USE
under Permit 16366 *of the Board and that the right to the use of this water has been perfected*
in accordance with the laws of California, the Regulations of the Board and the permit terms; that the
priority of this right dates from JUNE 7, 1971 *and that the amount of water to which*
this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated
purposes and shall not exceed ONE AND FIVE TENTHS (1.5) ACRE- FEET PER ANNUM TO BE
COLLECTED FROM JANUARY 1 TO MARCH 1 OF EACH YEAR. THE MAXIMUM WITHDRAWAL FROM
STORAGE SHALL NOT EXCEED 1.5 ACRE- FEET IN ANY ONE YEAR. THE MAXIMUM RATE OF
DIVERSION TO OFFSTREAM STORAGE SHALL NOT EXCEED 0.4 CUBIC FOOT PER SECOND.

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

NORTH 1,500 FEET AND EAST 1,400 FEET FROM SW CORNER OF PROJECTED SECTION 17, T5S,
R5W, MDB&M, BEING WITHIN NE $\frac{1}{4}$ OF SW $\frac{1}{4}$ OF SAID PROJECTED SECTION 17.

A DESCRIPTION OF LANDS OR THE PLACE WHERE
SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

5.6 ACRES WITHIN SE $\frac{1}{4}$ OF SE $\frac{1}{4}$ OF PROJECTED SECTION 17, T5S, R5W, MDB&M.

THIS LICENSE DOES NOT AUTHORIZE COLLECTION OF WATER TO STORAGE OUTSIDE OF THE SPECIFIED
SEASON TO OFFSET EVAPORATION AND SEEPAGE LOSSES OR FOR ANY OTHER PURPOSE.

THE QUANTITY OF WATER DIVERTED UNDER THIS LICENSE IS SUBJECT TO MODIFICATION BY
THE STATE WATER RESOURCES CONTROL BOARD, IF, AFTER NOTICE TO THE LICENSEE AND AN
OPPORTUNITY FOR HEARING, THE BOARD FINDS THAT SUCH MODIFICATION IS NECESSARY TO MEET
WATER QUALITY OBJECTIVES IN WATER QUALITY CONTROL PLANS WHICH HAVE BEEN OR HEREAFTER
MAY BE ESTABLISHED OR MODIFIED PURSUANT TO DIVISION 7 OF THE WATER CODE. NO ACTION
WILL BE TAKEN PURSUANT TO THIS PARAGRAPH UNLESS THE BOARD FINDS THAT (1) ADEQUATE
WASTE DISCHARGE REQUIREMENTS HAVE BEEN PRESCRIBED AND ARE IN EFFECT WITH RESPECT TO
ALL WASTE DISCHARGES WHICH HAVE ANY SUBSTANTIAL EFFECT UPON WATER QUALITY IN THE
AREA INVOLVED, AND (2) THE WATER QUALITY OBJECTIVES CANNOT BE ACHIEVED SOLELY THROUGH
THE CONTROL OF WASTE DISCHARGES.

Licensee shall allow representatives of the Board and other parties, as may be authorized from time to time by the Board, reasonable access to project works to determine compliance with the terms of this license.

All rights and privileges under this license including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time to time by the Board.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the Board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Dated: JULY 7 1978

STATE WATER RESOURCES CONTROL BOARD

R. J. Bauleger
Chief, Division of Water Rights

12/18/1999 ASGD TO LUCKY STAR INVESTMENT GROUP

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